

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

JUST ENERGY GROUP, INC., et al.,

Debtors in a Foreign Proceeding.¹

JUST ENERGY TEXAS LP, FULCRUM
RETAIL ENERGY LLC, HUDSON ENERGY
SERVICES LLC, and JUST ENERGY
GROUP, INC.,

Plaintiffs,

v.

ELECTRIC RELIABILITY COUNCIL OF
TEXAS, INC. and the PUBLIC UTILITY
COMMISSION OF TEXAS, INC.,

Defendant.

Chapter 15
Case No. 21-30823 (MI)

Adv. Proc. No. 21-04399 (MI)

Re Docket Nos. 1, 28, 30

**LUMINANT ENERGY COMPANY LLC'S STATEMENT OF POSITION
REGARDING MOTIONS FOR ABSTENTION**

Luminant Energy Company LLC (“Luminant”), by and through its undersigned counsel, hereby files this statement of position in connection with (a) *Defendant the Public Utility Commission of Texas's Motion to Dismiss Complaint, or Alternatively, for Abstention, and Memorandum in Support Thereof* [D.I. 28] (the “PUCT MTD”) and (b) *Electric Reliability Council of Texas, Inc. 's Motion to Dismiss and for Abstention* [D.I. 30] (the “ERCOT MTD”) and respectfully submits as follows:

¹ The identifying four digits of Just Energy Group Inc.'s local Canada tax identification number are 0469. A complete list of debtor entities in these chapter 15 cases may be obtained at www.omniagentsolutions.com/justenergy.

STATEMENT

1. As discussed during previous hearings, Luminant currently is challenging pricing during Winter Storm Uri, including challenging the price-increase rule issued by the PUCT during that period. One of Luminant’s challenges is currently pending in the Court of Appeals for the Third Judicial District, Austin, Texas. *Luminant v. PUC*, 03-21-00098-CV (Tex. Ct. App.—Austin 2021). Luminant’s appeal directly challenges the validity of the PUCT’s price-increase rule, and several other market participants (on both sides of the issue) have intervened in that appeal. The appeal is fully briefed and the parties are awaiting a date for oral argument. Luminant believes that it is in the best interest of all parties, and in the best interest of the marketplace, for that appeal to be resolved prior to any adjudication by this Court relating to the pricing during Winter Storm Uri. For that reason, Luminant respectfully supports the various motions for abstention.

2. The pricing disputes at issue involve the State of Texas’s regulatory and statutory scheme for the provision of electrical service. Challenges to pricing during Winter Storm Uri and the PUCT price-increase rule should ultimately be resolved by Texas appellate courts. Indeed, these state pricing disputes necessarily involve adjudicating legal and contractual issues that affect virtually every stakeholder in the ERCOT market. Adjudicating these issues in respect of a single market participant (as the Complaint proposes) could result in inconsistent outcomes for otherwise indistinguishably-situated market participants. Adjudication in Texas appellate court, on the other hand, ensures that repricing decisions adjudicate the issues uniformly as to all market participants, including Just Energy.

3. Accordingly, Luminant respectfully submits that Texas appellate courts are best equipped to uniformly and finally adjudicate the market-wide pricing disputes and therefore

respectfully requests that this Court abstain from adjudicating the pricing issue until the Texas appeal has been resolved.²

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² For the avoidance of doubt, Luminant takes no position on whether Counts 1, 2, 3, 4, and 5 should be dismissed for failure to state a claim. PUCT MTD ¶¶ 87-113; ERCOT MTD ¶¶ 26-41.

Dated: January 24, 2022

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

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CERTIFICATE OF SERVICE

This is to certify that on January 24, 2022, a true and correct copy of the foregoing statement was electronically filed with the Court using CM/ECF, which will send notification of this filing to counsel of record in the above-captioned case.

/s/ Eric T. Haitz
Eric T. Haitz